

1 map too just to make sure. I've never been --

2 MR. SHOOK: It's much easier once you have gone up
3 there.

4 JUDGE SIPPEL: That's what I understand.

5 All right, I'm up to date. You may go ahead, sir.

6 BY MR. SHOOK:

7 Q Mr. Becker, if you could turn to EB tab 18.

8 JUDGE SIPPEL: Are these on the official notice?

9 MR. SHOOK: No, sir.

10 THE WITNESS: No, the other one.

11 JUDGE SIPPEL: This is the motion for stay?

12 MR. SHOOK: Correct.

13 THE WITNESS: Yes, I see it.

14 Q This is a motion that you authorized?

15 A Yes.

16 Q Go to EB-19.

17 A I see it.

18 Q Is EB-19 a motion you authorized?

19 A Yes.

20 Q Please turn to EB-22.

21 A I have it.

22 Q Is EB-22 a news release which Peninsula prepared?

23 A Yes.

24 Q You were the author?

25 A I was.

1 Q Turn to EB-23, please.

2 A I have it.

3 Q It's a four-page document. Could you tell is what
4 this document is?

5 A This is a confidential, although it's not marked,
6 and I had requested that it be treated as confidential
7 information. It is a document of my income statement, my
8 expenses, my balance sheet for December 31, '96 through --
9 there is two different dates here. Basically, the income
10 statement covers 1999, 2000, 2001, and the balance sheet
11 covers -- well, it's essentially the same thing. It's
12 12/31/96. Actually, we have four years on the balance
13 sheet.

14 I do have a question about this.

15 Q That's something that we can work out.

16 A Yeah, I had really requested this be confidential.

17 JUDGE SIPPEL: All right. Well, you all can talk
18 about that later on, and you could talk about that at the
19 lunch break.

20 BY MR. SHOOK:

21 Q Could you turn to EB-25, please?

22 A I have it.

23 Q And could you tell us what this document
24 represents?

25 A It's a representation of some information which is

1 supplied to potential clients who -- with the contemplated
2 buying time on our radio stations. So an informational
3 sales piece.

4 Q And did you have any role in its preparation?

5 A This document was prepared by Terry Coval, my
6 sales manager.

7 Q Did you review it or approve it?

8 A Yeah, I was aware of it. I'm not sure I expressly
9 approved it because I gave this document because he has
10 delegated authority to prepare this kind of thing all the
11 time, so it's not an issue.

12 Q Now if you would look at the page numbers down at
13 the bottom right, there are pages that go one, two and then
14 five.

15 A Yes.

16 Q Ordinarily, what would pages 3 and 4 be?

17 A That question came up in my deposit on, and I
18 thought we clarified that.

19 Q To help you out, as I understand it they were
20 particularized sales pitches for --

21 A Oh, yes.

22 Q -- either particular clients or promoting
23 particular events?

24 A I believe that -- yes, that's -- to the best of my
25 knowledge that's what it is. Yeah, that's why it is

1 missing, because that gets customized for the client, put
2 together in a binder and the whole thing is presented.

3 JUDGE SIPPEL: Is there as as-of date for this or
4 when did -- the date you started using it, roughly?

5 JUDGE SIPPEL: Well, I don't --

6 THE WITNESS: I mean, a year, anything?

7 THE WITNESS: Well, it refers to KXBA-FM on page 3
8 or 5, whichever you choose to call it. It would have to
9 have been after we had been on the air March, I believe,
10 April of 1999. So it would have to have been after that
11 because that station wasn't operating prior to that time.
12 So in the last two years, roughly.

13 JUDGE SIPPEL: So circa 2000?

14 THE WITNESS: **Yes.**

15 BY MR. SHOOK:

16 Q And so far as you **know** this is still current, is
17 it not?

18 A Well, I would have to read the whole thing again.
19 Do you want to give me time to do that?

20 Q Certainly.

21 JUDGE SIPPEL: *Go* off the record.

22 (Pause off the record.)

23 THE WITNESS: What was your question?

24 BY MR. SHOOK:

25 Q Whether the letter was still current.

1 A It isn't now because the translators have been
2 turned off.

3 Q So it would have been current through August 28,
4 20023

5 A Yes.

6 Q Do you know when sales presentations are made,
7 whether there is a separate or additional charge to be made
8 for each additional market that is going to be reached?

9 In other words, if the salesperson is selling KPEN
10 in Homer, this is pre-August 28, 2002 now, when the sales
11 presentation is made for KPEN, is there going to be a
12 separate charge for the fact that KPEN reaches Seward and
13 that KPEN prior to August 28 reached Kodiak, and also
14 reached Homer?

15 A No. We charge a rate to be on the station. And
16 wherever the signal goes the people get the coverage via the
17 primary signal plus translators, and the rate that is
18 charged really has nothing to do whether or not an ad will
19 air in some other market. Some people could care less.
20 Others value it. It's a highly variable situation, but we
21 essentially sell each station as an entity with the coverage
22 that it provides.

23 Q In terms of making *sales presentations, this again*
24 is pre-August 28, 2000, what reference, if any, would be
25 made to market surveys that showed where or how many people

1 would listen to KPEN, for example?

2 A Well, we would use, if we had it available, a
3 current survey, if we had bought the survey and it's ours to
4 use along with the other sales presentation materials, and
5 quite often we are asked to provide a cost per point, which
6 is a dollar figure per thousand listeners to a buyer.

7 And if we bought a survey, for example, the
8 Arbitron, then we can give them that detailed information so
9 that they know what it's costing them per spot to reach X
10 number of people.

11 Q In terms of the surveys that you referenced, have
12 you ever bought one that covered the entire Kenai Peninsula?

13 A Actually, yes, but we also bought the entire --
14 well, what we would call the entire Kenai Peninsula, plus
15 Kodiak. It was a combined survey of Kodiak, Homer,
16 Kenai/Soldotna, and Seward. So we bought a combined survey
17 from what was called Wilheit Survey, which is now Eastland
18 Resources, I think, and it did cover the whole Kenai
19 peninsula, and included Kodiak.

20 Q Was that the type of survey that you usually
21 bought or did you buy -- ordinarily buy something else?

22 A We bought that survey for -- I had a contract, if
23 my memory is right, for about five years. We didn't buy it
24 last year. The problem was when the renewal came up for
25 that survey, the price had escalated from about -- I think

1 it was roughly \$5,000, and it had jumped up to about 10.
2 And I wasn't going to pay what I felt was becoming an
3 exorbitant fee to buy that survey anymore. I could buy the
4 Arbitron for roughly less than \$4,000, 3600, something like
5 that. So it became a fee issue more so than anything else.
6 I wasn't paying that kind of money.

7 MR. SHOOK: Oh, Your Honor, I had referenced
8 earlier on a letter that the Commission staff had sent to an
9 Peninsula relative to the Kenai/Soldotna --

10 JUDGE SIPPEL: Yes.

11 MR. SHOOK: -- applications. And I did have -- I
12 did have it with me. I just didn't realize it. Anyway, I
13 would like to have that marked as EB-29.

14 JUDGE SIPPEL: Okay, we will mark that. Will you
15 just state what the document is? It's a letter?

16 MR. SHOOK: It's a one-page letter dated October
17 19, 1982. It pertains to File No. BPFT-820414IA. And it
18 concerns an application for a new FM translator to serve
19 Kenai and Soldotna, and there is a typed name where a
20 signature might ordinarily appear, and the typed name is
21 Thomas J. English, and that person is identified as part of
22 the auxiliary services branch, Federal Communications
23 Commission.

24 JUDGE SIPPEL: Is he the author of the letter, is
25 it from him?

1 MR. SHOOK: It would appear to be that because in
2 the upper right-hand portion of the letter under "Reply
3 Refer **to**," it has 8930-TJE. TJE being Thomas J. English's
4 initials. And in the ordinary course, that's how letters
5 are identified both in terms of who prepares it, and then
6 the bottom would be who authorized its release.

7 JUDGE SIPPEL: So this is an FCC letter?

8 MR. SHOOK: Correct.

9 JUDGE SIPPEL: From the FCC. And it was the 19th.
10 what was the date on it, the year?

11 MR. SHOOK: October 19, 1982.

12 JUDGE SIPPEL: 1982. Okay. And it's a one-page
13 letter. It's marked for identification as you have
14 described it as the Enforcement Bureau's Exhibit 29 for
15 identification.

16 Now, **do** we get copies?

17 (The document referred to was
18 marked for identification as
19 EB Exhibit No. 29.)

20 JUDGE SIPPEL: Okay, do you have any questions to
21 ask of the witness about these?

22 MR. SHOOK: No additional questions because I
23 believe that the matter was covered and that there really
24 isn't anything, you know, in addition to what was covered
25 that needs to be covered

1 JUDGE SIPPEL: Are you offering it into evidence?

2 MR. SHOOK: I do.

3 JUDGE SIPPEL: Any objection?

4 MR. SOUTHMAYD: No, Your Honor.

5 JUDGE SIPPEL: It's received in evidence as
6 Bureau's Exhibit No. 29.

7 (The document referred to,
8 previously identified as EB
9 Exhibit No. 29, was received
10 in evidence.)

11 MR. SHOOK: Now as far as documents being admitted
12 into evidence, at this point it's my understanding that
13 there are relatively few

14 JUDGE SIPPEL: That's correct. And we haven't
15 even -- with the new ones that you brought in since
16 yesterday have been received except for Exhibit 28, which
17 has just been marked. That's subject to a determination.
18 That's a complete -- as much as you can come up with.

19 MR. SHOOK: Or if Mr. Southmayd happens to find
20 something that I cannot locate.

21 JUDGE SIPPEL: *Well*, I will take it in. *If* you
22 have given me everything that you can find, I'll accept it
23 subject to the other ruling on --

24 MR. SHOOK: In that case, I **do** offer EB-28.

25 JUDGE SIPPEL: You can -- okay, you do -- subject

1 to your ability to supplement at a later date in connection
2 with the other supplement, do you have any objection to its
3 admission?

4 MR. SOUTHMAYD: No, Your Honor.

5 JUDGE SIPPEL: And we know that -- all right, then
6 it's received in evidence at this point as Bureau Exhibit
7 No. 28.

8 (The document referred to,
9 previously identified as EB
10 Exhibit No. 28, was received
11 in evidence.)

12 JUDGE SIPPEL: All right.

13 MR. SHOOK: As far as the exhibits that were
14 previously exchanged, I can wait in terms of offering them
15 into evidence. It's basically your call, however you would
16 like to handle this.

17 JUDGE SIPPEL: Well, in light of the ruling, it
18 would seem to me that we could just make a -- there could
19 just be an omnibus motion that addresses all of them without
20 having to delineate them all. I am receiving them -- it's a
21 subject to receiving, I guess, if you want to look at it
22 that way. But for purposes of the mechanics and the
23 housekeeping, we could bring them in that way.

24 MR. SHOOK: Well, in that case, I offer --

25 JUDGE SIPPEL: Wait just a second. I want to hear

1 from Mr. Southmayd first. And then Mr. Southmayd can do
2 what he wishes between now and the prescribed dates.

3 How *does* that sound to you?

4 MR. SOUTHMAYD: Your Honor.

5 JUDGE SIPPEL: I'm not asking you to waive
6 anything.

7 MR. SOUTHMAYD: Right. Your Honor, *my* client has
8 been examined on these documents.

9 JUDGE SIPPEL: Yes, sir.

10 MR. SOUTHMAYD: I assume *I* will have the
11 opportunity to cross-examine.

12 JUDGE SIPPEL: Oh, yes.

13 MR. SOUTHMAYD: And I wondered if we could wait to
14 bring them in until after *I* finished my portion of the
15 examination.

16 JUDGE SIPPEL: Makes no difference. But I mean if
17 he's -- I could grant that motion. It's not going to impact
18 on anything. It's a logistical -- there is two ways of
19 doing this. The one way would be the painful way of going
20 through these document one at a time, and go through the
21 ritual of make a motion, is there any objection, you know, a
22 response from me, and then in **all** -- for all practical
23 purposes virtually they would all be granted.

24 Or we can just do it as *I* suggested, in a group
25 fashion. I will treat them as being received into evidence.

1 We can all make our notations to that effect, and you can --
2 I mean, whichever way I do it, it isn't going to impact at
3 all on what you are going to do. You **do** whatever you want
4 to do with these documents.

5 MR. SOUTHMAYD: But I would need -- when we waive
6 them as a group, with regard to specific exhibits to lodge
7 an objection at that point?

8 JUDGE SIPPEL: Well, if you think that there are
9 certain of these documents that you are going to have an
10 objection to or you're going to have more trouble -- not
11 trouble, but you are more concerned with than others, then
12 we can wait until you are finished, and we can just -- you
13 can handle the documents the same way that Mr. Shook did.

14 MR. SOUTHMAYD: If we are about to break, could I
15 have the time over the break to think about that?

16 JUDGE SIPPEL: Why don't we do that.

17 MR. SOUTHMAYD: Okay.

18 JUDGE SIPPEL: Why don't we do that. That makes a
19 lot of sense.

20 Did you want to add anything more this?

21 MR. SHOOK: Well, only to clarify, because we were
22 under -- we had the understanding that if any of the
23 documents or material therein to which we referred was
24 objectionable, that we were going to get an objection at the
25 point in time at which we referenced that material.

1 JUDGE SIPPEL: That's true. That's exactly right.
2 But we are sort of in that -- you know, we are sort of in
3 that time frame now. Once these things are received into
4 evidence, that's it, subject to, you know, the right that I
5 have given Mr. Southmayd with respect to supplementing them.
6 But we obviously want to get -- I mean, I have a distinct
7 interest in getting these in the record so that we can pass
8 that phase and get into the more important stuff.

9 But you go ahead. You take your time. We will do
10 it when we come back from the break.

11 MR. SOUTHMAYD: Thank you.

12 JUDGE SIPPEL: I would like to ask two questions
13 and you can decide whether or not -- well, I want to ask one
14 question that I definitely want you to answer now, okay.

15 If you would just give me your understanding, what
16 is your layman's understanding, you have been using this
17 term "Wrangell Radio Group exception," did I use that right
18 term -- is it exception? Yes. you have been using that
19 terminology as a shorthand in explaining a lot of this
20 testimony.

21 THE WITNESS: Yes.

22 JUDGE SIPPEL: Can you just give me a thumbnail of
23 exactly what do you mean by that?

24 THE WITNESS: Okay

25 JUDGE SIPPEL: What to you does it mean, the

1 Wrangell Radio Group exception?

2 THE WITNESS: Okay. It stems from a I don't know
3 if it's a decision --

4 JUDGE SIPPEL: It's a Commission decision back in
5 1975.

6 THE WITNESS: Yes.

7 JUDGE SIPPEL: But that's all right. I understand
8 the source of it. But what's in your head about it?

9 THE WITNESS: Okay. It was initially applied to
10 TV translators to originate local programming. It became
11 applied -- the staff began applying it to FM translators as
12 well in Alaska because there just wasn't many stations to
13 speak of up there.

14 And so they liberally granted virtually anything
15 you asked for in Alaska, and stations that are normally
16 prohibited from having translators could cross-band
17 translate and put an FM translator somewhere else.

18 If you take a look at all the translators in
19 Alaska, you will find a dearth of weird kind of things that
20 have been found by the Commission of translators that are
21 all over the place that translator **AM** stations, the --

22 JUDGE SIPPEL: All right, that's all right.

23 THE WITNESS: -- **open single delivery.**

24 JUDGE SIPPEL: Yes, I don't need that detailed
25 explanation.

1 You are basically using this as a -- that Alaska
2 has. from your standpoint, Alaska has traditionally received
3 very liberal exceptions from --

4 THE WITNESS: That is correct.

5 JUDGE SIPPEL: -- restrictive rules because there
6 are few stations up there, and it's a great big place.

7 THE WITNESS: That's exactly right.

8 JUDGE SIPPEL: Think of Texas.

9 THE WITNESS: It's more than twice the size of
10 Texas.

11 JUDGE SIPPEL: There you go. All right. I just
12 want to be sure I understand where you are coming from when
13 you use that shorthand.

14 THE WITNESS: We have been dealing with this for
15 18 years, and it's just like -- we have probably become too
16 familiar with it, I suppose, but --

17 JUDGE SIPPEL: No, that's okay. You don't have to
18 go into that. I just want to be sure I understand what's in
19 your head.

20 Okay, now, the other question I have, and you can
21 do this with me either now or when you come back, this is
22 not a test, but there is a caption to this order show cause,
23 and I just want to be sure that I am on target with what you
24 know to be the case.

25 There are three groupings of licenses in this

1 caption, all right. Now which is the grouping that was the
2 subject to the injunction that you turned off in August of
3 this year?

4 Do you want a copy of this before you --

5 THE WITNESS: Well, I'm not sure what you're
6 looking at there.

7 The injunction --

8 JUDGE SIPPEL: Which are the ones that you ceased
9 operating as of August of this year?

10 THE WITNESS: Okay. The translators that say,
11 that are listed before "Former licensee of FM translator
12 stations."

13 JUDGE SIPPEL: All right.

14 THE WITNESS: These seven.

15 JUDGE SIPPEL: Those seven?

16 THE WITNESS: Yes.

17 JUDGE SIPPEL: All right. And that's accurate.

18 And when you turned them off, or you ceased operating,
19 physically what have you done? Have you just turned a
20 switch on them?

21 THE WITNESS: Just turned the power switch off.

22 JUDGE SIPPEL: All right. Any kind of -- are they
23 stored in moth balls or you don't have to do that?

24 THE WITNESS: Well, they are dormant. I mean,
25 there is no power running through these translators. They

1 are not broadcasting.

2 JUDGE SIPPEL: Right. All right. Now, then there
3 is a group up above that that says "Licensee of FM
4 translator stations."

5 Do you see where I am?

6 THE WITNESS: Yes.

7 JUDGE SIPPEL: What does that -- what do they
8 pertain to?

9 THE WITNESS: K292ED and K285DU are fill-in
10 translators that are within our primary contour of our
11 station at Homer, KWW-FM.

12 JUDGE SIPPEL: Those are fill-ins?

13 THE WITNESS: Yes.

14 JUDGE SIPPEL: Okay.

15 THE WITNESS: The third line or fourth line is the
16 two stations in Seward which aren't a part of this
17 proceeding at this time, I guess. -

18 JUDGE SIPPEL: Well, okay. So Seward, Alaska,
19 those are -- those are translator stations?

20 THE WITNESS: Yes.

21 JUDGE SIPPEL: And they are subject to this
22 proceeding, as part of this proceeding because they are in
23 the caption of the case.

24 THE WITNESS: Oh, I see.

25 JUDGE SIPPEL: But those are operating?

1 THE WITNESS: Those are operating, yes.

2 JUDGE SIPPEL: Nobody has told you -- well, you
3 haven't been told to cease operating those yet?

4 THE WITNESS: No. The Commission just renewed my
5 licenses again. They reviewed it in December of 1999
6 through February 2006. They renewed them again in the May
7 2001 order, and then it issued the immediate show cause
8 order to revoke them.

9 JUDGE SIPPEL: All right. Well, that's a
10 different reason, different issue.

11 THE WITNESS: Right.

12 JUDGE SIPPEL: But right now you are operating all
13 of those translators but these translators are subject to --
14 are at risk, in effect, by virtue of this show cause
15 proceeding?

16 THE WITNESS: Yes. Because if the primary
17 stations go away, we have nothing left to broadcast.

18 JUDGE SIPPEL: All right. Okay.

19 Now, the licensee of stations, now the one that
20 the category up above.

21 THE WITNESS: Yes.

22 JUDGE SIPPEL: Those are -- the first one is an AM
23 station; is that right?

24 THE WITNESS: AM station.

25 JUDGE SIPPEL: And then the rest obviously say

1 that they are FMs?

2 THE WITNESS: That's correct.

3 JUDGE SIPPEL: So those are stations that exist
4 independently of the translators. They support the
5 translators?

6 THE WITNESS: Two of them.

7 JUDGE SIPPEL: Which ones are those?

8 THE WITNESS: KWBA (FM) --

9 JUDGE SIPPEL: FM. Those have the translators
10 affiliated with them?

11 THE WITNESS: Yes.

12 JUDGE SIPPEL: Okay. And for the Homer, Alaska,
13 okay, you've got one down here, K285DU, Homer, Alaska?

14 THE WITNESS: Yes.

15 JUDGE SIPPEL: Does that tie in with the --

16 THE WITNESS: That translates KWW-FM, because we
17 are a mountainous place, and we have some signal
18 difficulties, and that translator fills in a marginal signal
19 there.

20 JUDGE SIPPEL: All right. And what about the
21 Seward, the two for Seward?

22 THE WITNESS: Those would be considered other area
23 translators. They are beyond our primary contour.

24 JUDGE SIPPEL: Which of the licensee stations up
25 here do they relate to?

1 THE WITNESS: Both of them, KWW-FM and KPEN-FM
2 are the Seward stations.

3 JUDGE SIPPEL: And KPEN?

4 THE WITNESS: Yes.

5 JUDGE SIPPEL: Okay. And I take it the Bureau's
6 position *is*, with respect to these stations, is the Bureau
7 thinks that **all** of these stations that I just listed or that
8 we just talked about here should be revoked? Is that what
9 your position is?

10 MR. SHOOK: Well, in terms of --

11 JUDGE SIPPEL: Well, that's what -- I'm sorry, let
12 me rephrase that question.

13 From the Bureau's standpoint, those are the
14 stations that are at risk in this proceeding?

15 MR. SHOOK: Correct.

16 JUDGE SIPPEL: All right. While I am on this
17 subject, I just want to just give you some thoughts that I
18 have in my mind about this. It would be helpful in the
19 proposed findings and maybe even before the propose findings
20 if you could stipulate to it, to have some kind of a chart
21 presentation on these stations, particularly the translator
22 stations with respect to which of them are received
23 exceptions, and which of those exceptions were erroneous
24 exceptions, and some kind of a -- you know, a set up so that
25 I can see the dates at which the exemptions were granted. I

1 think those are the -- and certainly, as I have done here,
2 you know, what main stations **do** the respective translators
3 relate to.

4 MR. SHOOK: Your Honor, in some respects, at least
5 the Bureau's position is already spelled **out** in official
6 notice Exhibit 8 --

7 JUDGE SIPPEL: **All** right.

8 MR. SHOOK: -- in terms of what waivers were
9 granted and when they were granted.

10 JUDGE SIPPEL: All right. Does it also specify in
11 there which ones were granted in error **or** believed to have
12 been granted in error?

13 MR. SHOOK: I believe so. And to the extent that
14 it leave anything unclear, we have official notice Exhibits
15 11, 12 and 13, which are the Commission decisions, which
16 also address those questions.

17 JUDGE SIPPEL: **All** right. Well, let me just say
18 that what I have said something for you to be thinking
19 about, and you know, maybe it's an impractical thing. But
20 as I am hearing this testimony, and you know, something said
21 about this particular translator and this particular
22 translator, it's a little bit difficult to keep it all in
23 mind.

24 MR. SHOOK: We have -- we have no doubt that that
25 is the case. I'm sure all of us have jumped through a few

1 hoops trying to figure out what in the world we are looking
2 at.

3 JUDGE SIPPEL: You are not surprised to hear my
4 confession?

5 MR. SHOOK: No, sir.

6 JUDGE SIPPEL: Okay.

7 MR. SHOOK: I have the same confession; just for
8 an earlier point in time.

9 JUDGE SIPPEL: Okay. It's 12:30. You know, we'll
10 come back at a quarter of two, and we will still be -- are
11 you finished with this witness?

12 MR. SHOOK: Yes, sir.

13 JUDGE SIPPEL: All right. We will be back on the
14 stand for redirect for you -- actually redirect by your
15 attorney.

16 All right, we are in recess. Thank you.

17 MR. SOUTHMAYD: Thank you.

16 (Whereupon, at 12:30 p.m., the hearing in the
19 above-entitled matter was recessed, to resume at 1:45 p.m.,
20 this same day, Wednesday, September 25, 2002.)

21 //

22 //

23 //

24 //

25 //

A F T E R N O O N S E S S I O N

(1:45 p.m.)

JUDGE SIPPEL: Okay, we are back in session.

Mr. Southmayd?

MR. SOUTHMAYD: Your Honor, I had a question about my turn at bat if you will now. It's my understanding that Mr. Becker's testimony, in Mr. Becker's testimony he wore two hats, if you will; that he was the adverse witness for the Bureau, and called by the Bureau as an adverse witness; and that while he was up there, we also entered our direct case into the record, and he was also cross-examined on that.

I would assume, therefore, that my opportunity with Mr. Becker as to the materials covered by the Bureau not relating to his direct testimony is on the manner of cross-examination as opposed to redirect.

JUDGE SIPPEL: Well, I'm not sure it's all redirect unless you don't -- you're not interested in cross-examining your own witness, I don't think.

MR. SOUTHMAYD: Well, he was called as a adverse witness.

JUDGE SIPPEL: Well, you know, I don't care. You can ask him whatever questions you want to ask him.

MR. SOUTHMAYD: Okay, thank you, Your Honor.

JUDGE SIPPEL: In whatever context it is, I'm not

1 going to worry about it.

2 MR. SOUTHMAYD: **Also**, you had asked before the
3 lunch break that we consider putting all of the Bureau
4 exhibits into the record. We are prepared to do that, go
5 along if that's Your Honor's preference. We do have an
6 objection to just one of the exhibits.

7 JUDGE SIPPEL: Which one would that be?

8 MR. SOUTHMAYD: That would be, and it's a limited
9 objection, EB Exhibit 23, which contains certain
10 confidential financial information on Peninsula
11 Communications; specifically its income statement for three
12 years and its balance sheet for four years.

13 JUDGE SIPPEL: All right.

14 MR. SOUTHMAYD: At the time -- I'm sorry, Your
15 Honor.

16 JUDGE SIPPEL: Go ahead. No, I was going to say
17 that's in -- the witness has indicated that he wanted that
18 treated confidentially.

19 MR. SOUTHMAYD: So what we would ask is that, and
20 consistent with Your Honor's discovery order of June 20th,
21 that you would consider a motion for protective order for
22 the use of these materials at hearing, although they had to
23 be exchanged in discovery but held in confidentiality by the
24 Bureau for the purposes of discovery. We don't -- we don't
25 want these publicly disclosed because of the highly

1 confidential nature. But we understand that the Bureau may
2 want finding made on them.

3 It was our understanding in producing them that
4 they would be held in confidentiality and used for the
5 purposes of discovery and not put into the record in this
6 proceeding.

7 JUDGE SIPPEL: Could they be put in in some kind
8 of abbreviated form, only the things that were going to be
9 used in findings? I mean, I don't know how we do it, but
10 what's your reaction to this, Mr. Shook?

11 MR. SHOOK: Well, there is certain line items that
12 we are certainly not going to reference in findings and
13 conclusions, but there would be line items in all likelihood
14 relative to Anchorage, to Kodiak, conceivably to Seward, but
15 certainly Kodiak, that I'm not sure how we could do this
16 without actually referencing some of the numbers.

17 MR. SOUTHMAYD: Is it possible to have this
18 exhibit part of -- the concern is to have it generally
19 available for public inspection, including Mr. Becker's
20 competitors. Is it possible to have it as part of the
21 record for the purposes of the judge, the Bureau, and PCI in
22 its findings without having it readily available to the
23 public? Could there be an order that it not **be** included in
24 public documents but could be privately handed to --

25 JUDGE SIPPEL: Well, I think it could be put under

1 seal, but it would only -- I would rather see it put in with
2 having the parts that are not going to be -- that are agreed
3 to be protected, to be just marked out. We will just delete
4 it out so that the document will speak for itself in
5 connection with the findings.

6 Another possibility, another approach might be if
7 you and Mr. Shook could agree to a stipulation as to
8 specific line items that you want, and just stipulate to
9 those numbers, and then we could substitute the sub-
10 stipulation for the complete document that's in here now.

11 MR. SOUTHMAYD: Seems workable to me, Your Honor.

12 MR. SHOOK: I think we could do that.

13 JUDGE SIPPEL: Well, let's do it that way then.
14 Then what I will do I will receive all these in evidence
15 with the exception of that one. That will not be received.
16 I'll give you the copy that I have. Mr. Shook can hang on
17 to his until you get the stipulation worked out. There is
18 no purpose for me to have it. And when we come in the next
19 time you can offer that as a substitute exhibit, the
20 stipulation, whatever it might be, and we'll just put that
21 in that space. I guess since it's a stipulation the Bureau
22 could technically be sponsoring it, so we are dealing with
23 the Bureau exhibits. I mean, I -- well, maybe you can find
24 a more creative way to do it, but I mean, I'm just trying to
25 think in terms of filling up the space, all right, **so** there

1 is not an empty space.

2 MR. SHOOK: Well, conceivably we could have a
3 substituted EB-23.

4 MR. SOUTHMAYD: Correct.

5 JUDGE SIPPEL: That's true.

6 MR. SHOOK: Which would be agreed upon --

7 MR. SOUTHMAYD: Yes.

8 MR. SHOOK: -- the specific numbers and matters to
9 which they pertain.

10 MR. SOUTHMAYD: Right.

11 JUDGE SIPPEL: That would make sense.

12 All right, I will do it this way then. I'm going
13 to grant the Bureau's motion, and with the exception of EB
14 No. 23, which we have been discussing, Peninsula
15 Communications, Inc. income statements for 1999, 2000, 2001,
16 the -- well, you show 1998 balance sheets. Anyway, it's
17 four pages of Peninsula's financial statements, with the
18 exception of those four pages the Bureau's exhibits are
19 hereby received in evidence, and those will include, with
20 the exception of Exhibit 23, EB Nos. 1 through 25, and I
21 would call official notice documents Nos. 1 through -- 1
22 through 20, official notice Exhibits 1 through 20. The
23 other three exhibits that the Bureau sponsored are already
24 in evidence this morning. And I think that will be clear
25 enough for the record. I will certainly have my legal tech

1 work with the court reporter to be sure that the record is
2 clear in terms of each of these documents being received
3 into evidence.

4 (The documents referred to
5 were marked for identification
6 as EB Exhibit **Nos.** 1 through
7 23, 25, and Official Notice
8 Exhibits 1 through 20 were
9 received in evidence.)

10 JUDGE SIPPEL: Anything further on that?

11 MR. SHOOK: No, Your Honor.

12 JUDGE SIPPEL: I was going to go off the record so
13 I can return my copy of No. 23. I don't need it . Off the
14 record for a minute.

15 (Discussion off the record.)

16 JUDGE SIPPEL: Mr. Southmayd, are you ready to
17 proceed now with your examination of your client?

18 MR. SOUTHMAYD: Yes, sir.

19 MR. SHOOK: Your Honor, I do have one --

20 JUDGE SIPPEL: Well, you can come to the stand,
21 Mr. Becker

22 MR. SHOOK: One question, if nothing else --

23 JUDGE SIPPEL: Sure.

24 MR. SHOOK: -- relative to Mr. Southmayd's
25 questioning about how he is to treat his **own** witness. And

1 that is, whether or not Mr. Southmayd is allowed to lead his
2 client.

3 JUDGE SIPPEL: I'm go to treat it as redirect, and
4 if I treat it as redirect, I am going to limit the use of
5 leading. Certainly, you would not suggest answers to your
6 client. Leading questions with respect to getting into an
7 area with respect to background is fine because it's just
8 going to move things along. But on substantive matters --
9 on substantive matters which are -- well, with substantive
10 matters which relate to his direct testimony, this is
11 redirect.

12 MR. SOUTHMAYD: Correct.

13 JUDGE SIPPEL: In other areas, I will permit
14 cross-examination if it's -- if it's what he testified to as
15 Mr. Shook's witness. However, I will not permit leading
16 questions or to suggest answers.

17 MR. SOUTHMAYD: Thank you, Your Honor.

18 JUDGE SIPPEL: That's half a loaf. Let's go
19 carefully on this.

20 You are under oath.

21 THE WITNESS: Yes, Sir.

22 JUDGE SIPPEL: Your attorney will now be asking
23 you questions. I want you to be -- you know, answer the
24 questions as they are asked, of course, but there may be
25 some times when Mr. Shook or Ms. Lancaster will be

1 objecting. And if they do object, be sure you stop your
2 answer right then and there so I can rule on it.

3 Okay, you may proceed, sir.

4 MR. SOUTHMAYD: Thank you, Your Honor.

5 Whereupon,

6 ????? BECKER

7 having previously duly sworn, was recalled as a
8 witness and was examined and testified further as follows:

9 REDIRECT EXAMINATION

10 BY MR. SOUTHMAYD:

11 Q Mr. Becker, I would like to start with your direct
12 testimony. On page 1, paragraph 2, certain -- there is
13 certain testimony concerning -- certain previous testimony
14 concerning efforts you had made in terms of legislation.
15 Now this testimony was admittedly stricken, but as I recall
16 the Court indicated they would allow me to ask you your
17 state of mind in pursuing this legislation.

18 And so my question is, what was your state *of* mind
19 in pursuing this proposed legislation?

20 A My state of mind was to fix what I perceived to be
21 a problem of conflict in the Communications Act between the
22 permission granted by 307(c) (3) to continue to operate and
23 the conflict that occurs if ordered to turn off during that
24 period for more than 12 months, which **would** moot any appeal
25 that would be filed in connection with licenses which were

1 terminated or revoked, but which continued in effect.

2 So my state of mind was the reason for pursuing
3 the legislation thing was to fix the problem so that someone
4 else doesn't get trapped in this same mess that I'm in.

5 Q Thank you.

6 There was testimony earlier in response to a
7 question from counsel to the Commission regarding Mr.
8 Goodwin?

9 A Yes.

10 Q And who is Mr. Goodwin?

11 A Mr. Goodwin was my partner when we initially
12 started Peninsula Communications in 1980, circa 1980.

13 Q And his wife was named what?

14 A Joyce Goodwin.

15 Q Okay. And at some point, as your testimony has
16 shown, you and your wife bought out their stock interest in
17 Peninsula; is that correct?

18 A That is correct.

19 Q There was some question whether Mr. Goodwin
20 continued to have a role in station operations after that
21 transaction.

22 Did he have a role? Did he not have a role? What
23 if any, role did he have?

24 A Well, I think as I explained before, this goes
25 back 20 years so my memory is not super good. But to the

1 best of my recollection, Mr. Goodwin left, I think, around
2 1982, and there was a several month period of transition
3 where he had told me that they were leaving, and during that
4 time we negotiated a buyout for their ownership of their
5 stock, and eventually they both departed Peninsula
6 Communications after the buyout was in place and we had
7 agreed to go ahead and buy their part of the stock.

8 Q Did Mrs. Goodwin have any continuing role after
9 1982?

10 A Neither of them did, no

11 Q Mrs. Goodwin, what's her first name again?

12 A Joyce.

13 Q Is she related to any of the witnesses in this
14 proceeding?

15 A Yes.

16 Q And who would that be?

17 A John Davis's sister

18 Q John Davis's sister?

19 A Yes.

20 Q I think you indicated in response to questions
21 from counsel for the Commission that Mr. Coval was your
22 sales manager?

23 A Yes.

24 Q Did he have any responsibility over whether the
25 translators terminated their operation or not?

1 A No.

2 JUDGE SIPPEL: Did you give that spelling of his
3 name to the reporter yesterday?

4 MR. SOUTHMAYD: C-Q-V-A-L.

5 JUDGE SIPPEL: Thank you.

6 BY MR. SOUTHMAYD:

7 Q Now, Mr. Becker, you indicated in response to
8 questions from counsel yesterday that your stations -- that
9 your company has salespeople; is that correct?

10 A Yes.

11 Q Do any of those salespeople sell exclusively
12 advertising on the translators?

13 A Not exclusively on the translators, no.

14 Q Have you ever sold advertising to an advertiser
15 strictly on a translator or a number of translators?

16 A Never.

17 Q Is it possible for an advertiser to, by strictly
18 advertising on the Kenai translator?

19 A No, because of the way, the technical way the
20 translator performs, it's not possible the way we have it
21 set up to originate programming different than the parent
22 station. A translator rebroadcasts the parent station. So
23 whatever goes on the parent station plays on the
24 translators.

25 Q If you could turn to EB Exhibit 21, do you recall

1 seeing this yesterday?

2 A Yes.

3 Q And do you recall being questioned on this
4 yesterday by counsel to the Commission?

5 A I do.

6 Q Do you recall being asked to read certain sections
7 of your deposition transcript --

8 A Yes.

9 Q -- in connection with this? And specifically, do
10 you recall being asked to read certain entries between pages
11 158 and 160?

12 A Yes.

13 Q Were there certain portions of that, of those
14 three pages of deposition testimony were not read into the
15 record?

16 A I don't recall exactly what I read into the
17 record. So I don't remember.

18 MR. SOUTHMAYD: Your Honor, I would like to give
19 my witness a copy of the transcript of his deposition.

20 JUDGE SIPPEL: Sure. It is for purposes of
21 directing him to material that relates to this material?

22 MR. SOUTHMAYD: Yes, that relates to this letter
23 and relates to examination yesterday by counsel to the
24 Bureau.

25 JUDGE SIPPEL: You may proceed. You may approach

1 the witness. Do I have a copy of the deposition?

2 MS. LANCASTER: You have --

3 JUDGE SIPPEL: Yes, I do. Thank you. I've got
4 it.

5 BY MR. SOUTHMAYD:

6 Q Now, Mr. Becker, do you recall, and I'm referring
7 to pages 158 to 159, this testimony in your deposition and
8 the subject of it?

9 A Well, I believe the pages were 159 to 160.

10 Q Okay, involving what subject?

11 A The subject was a letter that Mr. Jacobus sent to
12 Mr. Palmoroy.

13 Q And is that letter EB Exhibit 21 --

14 A Yes.

15 Q -- previously referred to?

16 A Yes.

17 Q And do you recall being asked by counsel whether
18 you agreed or disagreed with sentence number two in the
19 letter beginning, "Peninsula Communications cannot
20 voluntarily cease operation"?

21 A Yes.

22 Q And do you recall what your response was?

23 A Well, I believe I referred to my deposition, and
24 that's I thought was what I read into the record yesterday.

25 Q Do you believe that your deposition testimony was

1 consistent with the answer that you gave yesterday?

2 A I think it was. Yes.

3 Q What section of your deposition testimony are you
4 referring to? I wonder if you would read it.

5 A Starting on page 159, line 22. The question was,
6 "In other words, if the seven translators were forced to
7 shut off if you were -- if Peninsula was forced to shut off
8 the seven translators, what you are saying is that
9 Peninsula's business would be so adversely affected that
10 it -- for all intensive purposes have to shut down?"

11 And my answer was, "No, I'm not saying that at
12 all."

13 "Okay, then what are you --"

14 "I'm saying that it would be adverse to our
15 business, obviously."

16 Q Was that testimony truthful when you gave it in
17 your deposition?

18 A Yes.

19 Q Thank you.

20 JUDGE SIPPEL: Let me ask the question, is it true
21 today?

22 THE WITNESS: It's true as I stated in my
23 deposition, it would be adverse. And the reason this line
24 appears, I believe, is Mr. Jacobus wrote this letter prior
25 to me seeing it. I received it a copy after --

1 JUDGE SIPPEL: You received it. I asked you a
2 very simple question. You answered your counsel. You said
3 the testimony that you read into the record was your
4 deposition testimony was true at the time, at the time you
5 gave the testimony.

6 THE WITNESS: Yes.

7 JUDGE SIPPEL: On August 18th.

8 THE WITNESS: Yes.

9 JUDGE SIPPEL: I assume the answer to the question
10 is it's true today?

11 THE WITNESS: Yes.

12 JUDGE SIPPEL: Thank you.

13 BY MR. SOUTHMAYD:

14 Q Mr. Becker, with regard to the 1991 report and
15 order by the FCC, that is, official notice Exhibit 4,
16 released December 4, 1990.

17 A I have it.

18 Q In response to -- do you recall being questioned
19 about this document by counsel for the Commission yesterday?

20 A Yes.

21 Q Do you recall being asked when you first read the
22 report and order?

23 A Yes.

24 Q And do you recall what your response was?

25 A 1996.

1 Q Is that the first time you became aware of this
2 order, 1996?

3 A No.

4 Q When did you first become aware of it?

5 A Well, I had read about this translator proceeding
6 in Radio World and other media trade magazines. Sort of
7 followed it in the media. But really didn't pay much
8 attention to it because I was under the impression that it
9 applied only to the continental U.S.

10 Q And can you give me the time frame on when you
11 became aware, read about it, and so forth?

12 A It would be probably a time period from 1990
13 through '96.

14 Q So initially about the time the report was issued?

15 A Yes.

16 Q Mr. Becker, do you recall questions from counsel
17 about rating surveys?

18 A Yes.

19 Q And market rating surveys in markets in which you
20 have stations?

21 A Yes.

22 Q Do these rating surveys reflect rating points for
23 translators?

24 A **No.**

25 Q So based on -- is it true then that based on the

1 ratings information in these markets, there is no way to
2 tell how popular individuals translators are?

3 A That's correct.

4 Q Mr. Becker, do you recall being asked by counsel
5 regarding your request for stay filed with the D.C. Court of
6 Appeals in an attempt to have a stay issued in this year,
7 2002? I'm sorry.

8 A Could I re-answer that question, the previous one?

9 Q Sure.

10 A Or clarify it.

11 The one exception, which I hadn't really thought
12 about, but comes to mind is the rating service that we had
13 for Kodiak would be an exception because the primary station
14 could not be heard in Kodiak, and therefore the ratings that
15 come out of a Kodiak survey would reflect listenership for
16 translator only in that situation.

17 However, on the peninsula, it would be very hard
18 to distinguish because the primary stations are heard on the
19 peninsula, and would be kind of combined with peninsula
20 listening.

21 Q Thank you for clarifying that.

22 With regard to your 2002 request for stay in the
23 D.C. Circuit Court of Appeals, what was the reason you filed
24 that request for stay?

25 A 2002 request for stay for the D.C. Circuit was

1 filed primarily to deal with the injunction that had been
2 issued through the Alaska District Court.

3 Q Why did you file a request for stay in the D.C.
4 Court of Appeals in connection with an injunction by the
5 Alaska District Court?

6 A Because the Ninth Circuit had ruled the only place
7 that we could go to get a stay that would stop the
8 injunction was to the D.C. Circuit.

9 Q Was it your intention in filing the stay request
10 in the D.C. Circuit to stay the FCC order --

11 A No.

12 Q -- in 2001? Why not?

13 A There was no need to stay.

14 Q Can you explain that?

15 A Yes. We had continuing authority to operate under
16 Section 307(c) (3) with licenses which continued in effect
17 because we had timely filed an appeal under Section 402,
18 which came within the scope of Section 405 referenced in
19 307(c) (3).

20 Q Thank you.

21 Mr. Becker, if you could refer to EB Exhibit No.
22 4, page 36.

23 A I have it.

24 Q Is that an application for license renewal for
25 your various translators in Alaska?

1 A Yes.

2 Q And if you could look at page 40, question 5(a)
3 and (b).

4 A I see them.

5 Q How did you answer those?

6 A Yes on 5(a) and yes on 5(b)

7 Q Okay, now if you could go to that same exhibit --
8 strike that.

9 Did you uniformly answer yes to 5(a) and (b) on
10 all your license renewal applications for these translators?

11 A To the best of my recollection, yes.

12 Q Now if you could go to page 1 of EB Exhibit 4.

13 A I have it.

14 Q Is that a 1997 license renewal application **for**
15 your translator in Kodiak, Alaska?

16 A Yes.

17 Q And in response to question 5(a) and (b), what did
18 you check there?

19 A I checked "No.".

20 Q Now, were those the same question 5(a) and (b)
21 that you had previously checked "yes" in connection with
22 your 1995 license renewal applications for your translators?

23 A Yes.

24 Q How do you explain the different answers?

25 A We received a letter from Linda Blair in '96, in